IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4093 OF 1997

Mulekhand Koliwada Machhimar
V.K.S. Society Ltd and others Petitioners

versus

State of Maharashtra and others Respondents

Mr.R.K.Mendadkar, adv. for petitioners.
Mr.C.R.Sonawane, AGP for respondents.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 28th October 2004
PC :

1. By this petition under Article 226 of the Constitution of India, petitioners challenge orders at Exhibit-G (collectively) whereunder penalty has been imposed on the petitioners for contravention of provisions of Maharashtra Marine Fishing Regulation Act, 1981 (hereinafter referred to as "the Act").

2. Petitioners are fishermen and for their livelihood they are fishing along costal line of Maharashtra.

3. It is their case that in the fishing season of 1995, along with others, they had gone in deep waters for fishing. After fishing, when they

returned to the port, respondent no.5 noticing machanised trawlers concluded that petitioners have violated provisions of the Act and prohibitory order issued on 1st June 1995. Accordingly, a show cause notice was issued by adjudicating authority/respondent no.4 on 22nd September 1995. By the show cause notice petitioners were directed to remain present on 16th October 1995 and explain why action should not be taken against them for violating provisions of Act, conditions of licence and registration of petitioners business.

4. Petitioners filed their replies to the contents of this notice. They challenged legality and validity of this show cause notice. It was their case that the Act did not apply to international deep seas beyond territorial waters. It was their contention that they go for fishing beyond 12 Nautical miles in the international deep sea and prohibitory orders are not applicable to such an activity. In other words, orders prohibiting fishing from 1st June to Narali Pornima every year are not applicable. They contended that notice is without authority of law, wholly illegal and liable to be revoked and/or cancelled. The adjudicating authority was not satisfied with these contentions and

proceeded to pass an order on 22nd November 1995 imposing penalties on petitioners. This was on the basis that provisions of the Act have been contravened by the petitioners. Petitioners filed an appeal against the order of adjudicating officer before Appellate Board constituted u/s 18 of the Act. Initially, it appears, there was some controversy about constitution of the appellate board. Therefore, petitioners were directed to move the Collector, Ratnagiri. The appellate authority confirmed the order of Tahsildar and adjudication officer. The appellate authority's order is dated 23rd April 1996. Petitioners state that under the Act the order passed by appellate board is final. The quantum of fine is thereafter recovered by coercive measures, and, therefore, the authorities issued a notice to that effect on 4th March 1997. Petitioners apprehending confiscation and seizure of their trawlers and other materials, approached this Court by instant petition. This Court has while admitting this petition granted interim relief thereby restraining the respondents from taking any action on the basis of impugned orders.

5. Mr.Mendadkar, learned counsel for petitioners, contended that the show cause notice

and the order passed in pursuance thereof is wholly without jurisdiction and nullity. He submits that authorities have proceeded on the basis that the Act applies to the activities of petitioners. He submits that neither the Act nor the prohibitory order would apply the moment petitioners carry on fishing activities beyond territorial waters of Maharashtra. He submits that petitioners were fishing in deep seas and therefore, the Act has no application to these activities. He invites our attention to the term "Specified Area" as defined in the Act. He also invites our attention to the definition of term "Adjudicating Officer", "Enforcement Officer" and term "Court". He submits that Section 4 Chapter-II dealing with regulation of fishing provides that the State Government having regard to the matters referred to in sub section 2 thereof and after consulting with the Advisory Committee, by order notified in the official gazette, regulate, obstruct or prohibit activities under clauses (a) to (d) of sub section 1 of Section 4 of said Act. He submits that the regulating power is to be exercised with regard to fishing activities in any specified area. All activities which could be brought within purview of the regulatory provision or prohibitory order are those having nexus to

specified area. He submits that the moment fishing activities are carried beyond territorial waters, as may be specified by the State Government by notification in the official gazette, the Act ceases to apply. He submits that, therefore, there is no question of any violation or contravention of either the provisions of the Act or the prohibitory orders so as to invoke Chapter-III of the Act and impose any penalties on the petitioners. He submits that Section 26 of the Act makes this position absolutely clear. Therefore, the authorities proceeding on a misconception of law have unnecessarily issued the impugned notices and passed orders imposing penalties. He submits that the authorities having no jurisdiction to do so, the orders must be quashed and set aside on this ground alone.

6. On the other hand, Mr.Sonawane appearing for respondents submits that the entire basis on which the petition proceeds, is misconceived. He submits that petitioners have not been fishing in high sea beyond territorial waters of the State of Maharashtra. He submits that petitioners' boats/vessels have been fishing within territorial waters of State of Maharashtra. This fact is admitted by Tandels of petitioners before

the concerned authority. He submits that no material has been placed by petitioners in support of their contentions that they were fishing beyond territorial waters of State of Maharashtra, that is, beyond specified area as contemplated by the Act. He submits that such materials not being placed before the adjudicating officer and appellate board, it is not permissible for the petitioner to now raise the contentions about inapplicability of the Act for the first time in writ petition. In other words, he submits that this is not a pure question of law but a mixed question of fact and law. He submits that the authorities have proceeded upon the materials produced before them and the orders impugned in this petition cannot be said to be vitiated by any error apparent nor can they be termed as perverse so as to call for interference in this Court’s jurisdiction under Article 226 of Constitution of India.

7. Our attention is also invited to an affidavit filed by respondent no.5. Respondent no.5 is an authority under the Customs and Central Excise Act posted at Ratnagiri. In his affidavit he points out that it is the Inspector of Customs and Central Excise who caught the petitioners while fishing in the prohibited area. He points

out that when fishermen were directed to produce their passes, they were unable to show them. Their statements were recorded in accordance with provisions of Customs Act. It is on the basis of these statements and complaint made by respondent no.5, that action was initiated by other respondents. He submits that fines have been imposed upon members of petitioner no.1 for their breach and violation of provisions of Act and no interference is, therefore, necessary.

8. In the affidavit details have been given about activities on the relevant date. It is contended that the boat was found fishing within 200-300 meters within costal area. Respondent no.5 in this affidavit points out that the Custom Officials found fresh fish. He points out fish like Prawns are found in shallow water from 1st June to Narali Pornima day i.e. near costal area. He submits that fish found in the boats were fresh fish normally found in the costal area during relevant period. He points out that during the relevant period a prohibitory order/ban is imposed and nobody is permitted to carry on fishing activities. Therefore, the fishermen having been caught fishing in shallow waters have clearly violated prohibitory orders and action has been rightly initiated against

them.

9. With the assistance of learned counsel appearing for parties, we have perused the relevant provisions of Act. We have also perused carefully the show cause notice and the impugned orders. We have given anxious consideration to rival contentions. In our view, in the light of the statements and admissions of petitioners/fishermen, it will not be possible to entertain the submission of Mr.Mendadkar that the Act will not apply in the facts and circumstances of present case. Once statements have been voluntarily made about fishing along costal area/specified area and on the basis of such statements and admission proceedings have been initiated, it will not be proper to entertain the plea about lack of jurisdiction and applicability of the Act. These contentions can be considered in an appropriate case.

10. Once, on materials produced before adjudicating officer and appellate board, it becomes clear that fishing activity was going on within the specified area and the prohibitory order was in force at the relevant time, then the action of authorities cannot be faulted. The adjudicating officer and the appellate board have

rendered findings of fact consistent with the materials produced before them. The case of violation of prohibitory order and contravention of the Act is based upon statements recorded u/s 108 of the Customs Act and admissions of Tandels as pointed out in details in the affidavits. The appellate authority has specifically recorded a finding that the petitioners have not produced any evidence to substantiate their plea that the fishing activity was carried on beyond specified area. Therefore, in our view, this is not a fit case where we should interfere in exercise of our writ jurisdiction.

11. At this stage Mr.Mendadkar, learned counsel for petitioners submit that fishing activity is the only source of livelihood. He submits that Members of petitioner no.1 and other fishermen take the risk of fishing in rough seas during ban period only because there is no other source of livelihood. He submits that this is not a case where it is pointed out that breaches and violations have been recurring. He submits that quantum of fine imposed in this case is very heavy. He submits that if now the petitioners are called upon to pay the fine, it will be very difficult for them to arrange amounts. He submits that non payment of fine entails serious

consequences inasmuch as coercive measures under the Maharashtra Land Revenue Code would be initiated. Once they are initiated, the equipments and boats can also be seized for recovery of fine. In the light of this, the amount of fine imposed on petitioners be reduced appropriately.

12. We have given anxious consideration to this aspect of matter. In our view, once it is established that provisions of the Act have been contravened and terms and conditions of the prohibitory order are breached, then the decision to impose fine and penalty cannot be interfered with in our jurisdiction. However, even with regard to quantum of fine although nothing has been produced about financial condition and hardships, in our view, since the order imposing penalty and fine was stayed for a long time, interest of justice would be subserved if we reduce the quantum of fine in each case to 50% of that imposed and levied by the Authorities. It is clarified that on account of averments in para no.13 of the petition this concession is granted and quantum of fine is reduced as above.

13. We clarify that this order is passed in peculiar facts and circumstances of this case and

shall not be treated as a precedent in future.

14. Save and except modification in the quantum of fine, no interference is necessary with the impugned orders. In the result, writ petition fails. Rule discharged subject to modification as above. No order as to costs.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)